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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/706,184	11/12/2003	Dennis J. Sammut	SAMMUT-07597	6125
7590	05/17/2005		EXAMINER	
David A. Casimir MEDLEN & CARROLL, LLP Suite 350 101 Howard Street San Francisco, CA 94105			CLEMENT, MICHELLE RENEE	
			ART UNIT	PAPER NUMBER
			3641	
DATE MAILED: 05/17/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/706,184	SAMMUT ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Michelle (Shelley) Clement	3641	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### **Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 17 May 2004.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

4)  Claim(s) 1-44 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) \_\_\_\_\_ is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) 1-44 are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

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**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
    Paper No(s)/Mail Date \_\_\_\_\_.  
4)  Interview Summary (PTO-413)  
    Paper No(s)/Mail Date. \_\_\_\_\_.  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: \_\_\_\_\_.  
\_\_\_\_\_

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-16, 27-31, and 43, drawn to a ballistics calculator system, classified in class 89, subclass 41.17.
  - II. Claims 17-25, drawn to a reticle, classified in class 33, subclass 297.
  - III. Claim 26, drawn to a target acquisition device, classified in class 42, subclass 122.
  - IV. Claim 32, drawn to a method for using a ballistic calculator system, classified in class 434, subclass 19.
  - V. Claim 33, drawn to a method for shooting comprising selecting an aiming point and using aiming point information, classified in class 89, subclass 1.11..
  - VI. Claims 34-38, drawn to a reticle, classified in class 33, subclass 297.
  - VII. Claims 39-42, drawn to a target acquisition device, classified in class 42, subclass 122.
  - VIII. Claim 44, drawn to a method for shooting comprising providing a device, a calculator system, selecting an aiming point and using the aiming point classified in class 434, subclass 27.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions I and II are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be

separately usable. In the instant case, inventions II and VI has separate utility such as a reticle for a bow. See MPEP § 806.05(d).

3. Inventions I and III are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention III has separate utility such as a spotting scope for a photo-imaging device. See MPEP § 806.05(d).

4. Inventions I and VI are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention VI has separate utility such as a reticle for a bow. See MPEP § 806.05(d).

5. Inventions I and VII are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention VII has separate utility such as a spotting scope for a photo-imaging device. See MPEP § 806.05(d).

6. Inventions I and IV, V and VIII are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the product as claimed can be used in a materially different process such as the process of simulated firing and inputting simulated information.

7. Inventions II, III, VI and VII are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not

require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because Claim 34 is an evidence claim which indicates that the combination does not rely upon the specific details of the subcombination for its patentability. The subcombination has separate utility such as a reticle for a bow.

8. Inventions (II and VI) and (IV, V and VIII) are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the product as claimed can be used in a materially different process such as the process of aiming a bow.

9. Inventions (III and VII) and (IV, V, and VIII) are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the product as claimed can be used in a materially different process such as in the process of sighting a image and capturing the image on film.

10. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

11. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

12. This application contains claims directed to the following patentably distinct species of the claimed invention:

Applicant is required to elect a single species regarding **the information the program uses**, from: external conditions, the firearm being used, the projectile being used, the target acquisition device and reticle being used, the shooter, the relation of the shooter and the target (for example applicant may elect external conditions only; firearm being used only; external conditions and firearm being used only; external conditions and the projectile being used and firearm being used only, etc.).

If applicant elects information regarding *external conditions* from above, then applicant must further elect a single species **regarding external conditions** from: date, time temperature, barometric pressure, relative humidity, target image resolution, wind-speed, wind direction, hemisphere, latitude, longitude, altitude (see example above).

If applicant elects information regarding *the firearm being used*, then applicant must further elect a single species **regarding the firearm being used** from: the rate and direction of the barrel twist, barrel length, internal barrel caliber and internal barrel diameter.

If applicant elects information regarding *the projectile being used*, then applicant must further elect a single species **regarding the projectile being used** from: the projectile weight, caliber, configuration, propellant type, propellant amount, propellant potential

force, powder, primer, ballistic coefficients of the projectile, the muzzle velocity of the projectile. (See example above)

If applicant elects information regarding *the target acquisition device and reticle being used*, then applicant must further elect a single species regarding **the target acquisition device and reticle being used** from: type of reticle, power of magnification, plane of function, the positional relationship between the target acquisition device and the firearm, the range at which the target acquisition device was zeroed using the firearm and projectile. (See example above)

If applicant elects information regarding *the shooter*, then applicant must further elect a single species regarding **the shooter** from: the shooter's heart rate and rhythm, visual acuity, visual idiosyncrasies, respiratory rate, blood oxygen saturation, muscle activity, brain wave activity, number and positional coordinates of spotter assisting the shooter. (See example above)

If applicant elects information regarding *the relation between the shooter and target*, then applicant must further elect a single species regarding **the relation between the shooter and target** from: the distance between the shooter and the target, the speed and direction of movement of the target relative to the shooter, the angle formed between the barrel and an axis perpendicular to the force of gravity, the direction of fire from true North. (See example above)

If applicant elects the distance between the shooter and the target, from the species immediately preceding, then applicant must further elect from **ONE** of the

following species: less than 100 yards, greater than 100 yards, greater than 500 yards, greater than 1000 yards, greater than 1500 yards.

Applicant must elect **ONE** of the following species of where the primary vertical and horizontal cross-hairs intersect: at the optical center of the reticle, above the optical center of the reticle, or below the optical center of the reticle.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

13. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michelle (Shelley) Clement whose telephone number is 571.272.6884. The examiner can normally be reached on Monday thru Thursday 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Carone can be reached on 571.272.6873. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

